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IN THE

Supreme Court of the United States

October Term, 1965

No.

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Local 1291, International Longshoremen's Association, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled case on May 10, 1965.

OPINIONS BELOW.

The Decision and Order of the National Labor Relations Board, and Intermediate Report, reported in 142 N.L.R.B. 1228 (1963) and the related Decision and Determination of Dispute, reported in 137 NLRB 1451 (1962) are printed in the Appendix to Petitioner's Brief for use of the Court below, nine copies of which are filed herewith. The opinion of the United States Court of Appeals for the Third Circuit, printed as Appendix B hereto, is reported in — F.2d —. The Decree of the United States Court of Appeals for the Third Circuit is printed as Appendix C hereto.

JURISDICTION.

The Decree of the United States Court of Appeals for the Third Circuit was entered on May 10, 1965 (Appendix C). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED.

1. Does the National Labor Relations Board have the power to change the terms of a properly-negotiated collective bargaining agreement concerning the size of work gangs, where the employer seeks to assign a part of the gangs to engage in services within the jurisdiction of another union unless the first union agrees to a reduction in the gang size, which the union refuses to do; is the union's insistence upon the employer's compliance with the gang size under the agreement a violation of Section 8(b)(4)(D) of the Act which makes it an unfair labor practice to force or require an employer to assign to one union work falling within the jurisdiction of another union?

2. Where the employer invokes the arbitration clause under the collective bargaining agreement, in an effort to reduce the gang sizes, and the decision supports the union's contention, can the National Labor Relations Board refuse to give effect to the arbitration decision and to the properly-negotiated collective bargaining agreement?

STATUTE INVOLVED.

The statutory provisions involved are National Labor Relations Act, Section 8(b)(4)(D) and 10(k), 29 U.S.C.A. 158(b)(4)(D), 160(k).

STATEMENT OF THE CASE.

The Philadelphia Marine Trade Association (PMTA) is the *sole* collective bargaining agent for all of its members along the Philadelphia water front in dealing with Local 1291, International Longshoremen's Association (ILA). No separate agreements were or could be negotiated with the individual members of PMTA (148a).

Northern Metal Company (Northern), a member of PMTA, operates a dockside terminal in the Port of Philadelphia for the loading and unloading of ocean-going vessels. Adjoining the piers is a large *yard* (162 acres), maintained by Northern, which is used for storage, parking and servicing of motor vehicles intended for delivery to the vessels at the docks.

PMTA is in collective bargaining agreement with Local 1291, ILA, which agreement covers the loading and unloading of all vessels (Ex. R-3). Before Northern commenced its stevedoring operations, it entered into discussions with various unions, but, in November of 1951, it joined PMTA and thereupon became a party to all the agreements between PMTA and ILA. No separate agreement was or could have been negotiated, since the PMTA-ILA agreements were expressly the sole agreements between the parties (32b-33b, 109a).

Prior to the commencement of its stevedoring operations, Northern had conducted a scrap metal operation in its yard adjacent to the piers, for which activities it employed members of Local 14, International Union of Marine Shipbuilding Workers of America (IUMSWA). In connection with its activities in the "yard" adjoining the piers, Northern continued to have a separate contract with Local 14, IUMSWA.

Prior to the incident involved herein (from 1951 to 1960), Northern had loaded and unloaded more than 250,000 Army trucks, tanks, halftracks and other similar equipment, which, being categorized as "heavy lifts", required special

rigging for loading into and unloading from the vessels (111a, 36b-44b). Mixed with this vast number of "heavy lifts" was a small number of passenger automobiles which were not only *de minimus* in number, but *sporadic* in appearance (2b). In 1960, Northern entered into its first contract for the shipment of *full cargoes* of privately-owned passenger cars (POV's).

The ILA contract required a minimum of 22-man gangs for the handling of "general cargo" (Section 14). The same section of the agreement further provided that where "heavy lifts" were involved, a minimum of *fifteen* men were required.

On June 19, 1960, Northern employed and assigned two 15-man gangs to load the passenger cars into a vessel at its terminal. When the men arrived on the scene and learned they were to load a full cargo of passenger cars, they protested on the ground that passenger cars were "general cargo" and were so treated everywhere else along the water front under the same contract. The men, therefore, refused to work unless the usual 22 man gangs were employed. This was the status of the situation when it was first brought to the attention of the union agents (160a-161a).

Northern thereupon invoked the arbitration machinery under Section 28 of the contract and raised the specific issue —were passenger automobiles general cargo, requiring a 22-man gang? (13b). *After a full hearing, the Grievance Board ruled that the passenger automobiles were general cargo and required 22-man gangs for loading* (44a-46a, 18b). The testimony of Mr. Alfred Corry, the Executive Director of the *employer* association (PMTA) given at the arbitration hearing, on this vital point shows (18b):

> "Q. What was that decision you announced there Mr. Corry?
>
> "A. The decision announced was that there should be 22 men employed in the loading and discharging of automobiles.

"Q. Are you able to state whether the automobiles were regarded as general cargo?

"A. Yes, they were.

"Q. At that time was the decision written or oral?

"A. It was an oral decision.

"Q. Is that the customary way to deliver it?

"A. Yes, it is."

Despite the fact that this was the *unanimous* decision of the Grievance Board (22b-27b), and that Northern, itself, had invoked the arbitration procedure, Northern, nevertheless, refused to accept the resulting decision, and proceeded to circumvent it by filing an unfair labor charge with the NLRB.[1]

Before the Board, Northern shifted its position and contended that the insistence on 22-man gangs was, in effect, a coercive effort on the part of ILA to force Northern to assign seven men of each gang to work in the "yard", thereby encroaching on IUMSWA's jurisdiction. *This was despite the undisputed testimony that ILA never demanded or requested the work in the "yard". The only threat in the case came from Northern to IUMSWA, that if Northern was required to hire 22-man gangs, it would assign certain of those men to yard work* (1b). *ILA'S position has been that it does not contend for the yard work.* It seeks only a 22-man gang as required by its contract, and in accordance with established practice in the entire Port of Philadelphia.

In this connection, the testimony of Alfred Corry, Northern's own representative, and Executive Director of PMTA, decisively establishes that 22-man gangs are required and are actually employed by all employers along the waterfront under the very same contract (19b):

---

1. Northern first filed a "featherbedding" charge which it could not sustain, and, therefore, withdrew it in lieu of a dismissal by the Regional Director. It then filed the instant charge contending that ILA was attempting to force Northern to assign work of IUMSWA to ILA, by its insistence on the 22-man gang under the contract.

"Q. Are there other employers who handle the automobiles in the port?

"A. Yes, there are.

* * *

"Q. What size gangs did they use in connection with the handling of automobiles at other piers?

* * *

"A. The other employers that I did observe used 22 men in a gang in the discharging or loading of these automobiles.

"Q. Now, Mr. Corry, are you able to state where those 22 men are handled from, whether from the hook or on the pier?

"A. *Our agreement calls for as to general cargo a minimum of 22 men in a gang. The only restriction that we have as employers is to see that a minimum of eight men must be in the hold of a ship. As to the distribution of the remaining 14 people, they are purely and solely the discretion of the employer.*" (Emphasis supplied.)

Thus, the record clearly demonstrates that all other employers, over the years, operating under the same contract, have been using 22-man gangs for the handling of automobiles, regardless of the area over which the gang is assigned to operate, whether loading from the "hook", which is at the ship's side, into the vessel, or from some other point, as may be designated by the employer.

The NLRB first held a hearing to "determine the (alleged) dispute" between the two unions, under Section 10(k) of the Act (29 U.S.C.A. 160(k)). It determined that Local 1291 was not entitled to compel the company to hire 22-man gangs to perform the work in question; that this would "force" Northern to assign to longshoremen work to which the yard men of Local 14 were entitled.

Thus, although ILA *expressly* stated that it was *not* claiming the work of the yard men, the General Counsel, in order to invoke a jurisdictional dispute proceeding, as-

sumed, contrary to ILA's expressed position, that ILA *was* claiming the work, and then proceeded to hold that yard work belongs to the yard men, as if that issue had been raised by ILA.

The Regional Director issued a complaint under Section 8(b)(4)(D), which the Board sustained. On Petition for Enforcement, the Court of Appeals affirmed the Board decision. The Court of Appeals held, first, that the object of ILA's insistence on a 22-man gang was to force an improper work assignment by Northern to a 22-man gang, giving no legal effect whatever to the collective bargaining agreement between Northern and ILA, which *required* a 22-man gang. Second, the Court of Appeals held that ILA could *not* legally insist upon Northern's compliance with its collective bargaining agreement or with the arbitration decision, and that its efforts in support of its admitted contract rights were illegal. Thus, the Court of Appeals has effectively reformed and re-written the collective bargaining agreement between the union and the employer involved in this case, not only with respect to the gang sizes, but it also made the arbitration machinery a unilateral instrument which could impose a binding decision on the union, but not on the employer.

Petitioner, Local 1291, seeks review of this decree because it is in direct and dramatic conflict with the decisions of this Court sustaining the sanctity of contract and the enforcement and application of arbitration decisions.

REASONS FOR GRANTING THE WRIT.

I. The Action of the Board in Changing the Terms of Contract by Reducing the Gang Size and Holding That the Union's Efforts to Obtain Compliance With the Contract Was Coercion to Obtain Work of Another Union, Was in Direct Conflict With the Decision of This Court in NLRB v. Radio and Television Broadcast Engineers (CBS), 364 U.S. 573, and NLRB v. American Nat. Ins. Co., 343 U.S. 395.

Two cardinal doctrines announced by this Court are principally invoked by the facts and history of this case. They emphasize that the *NLRB* decision was doubly in error. First, it is basic that a union has the right, indeed, the *obligation*, to insist upon compliance with its collective bargaining agreement, and its efforts to achieve this cannot be labeled coercion to obtain work. Second, the Board may not re-write the substantive terms of a legal and proper collective bargaining agreement.

This Court has made it clear that a union cannot be held to have coerced an employer to assign work to its members in violation of the Act, where the employer is already bound by contract to make such assignment. In *NLRB v. Radio and Television Broadcast Engineers Union (CBS)*, 364 U.S. 573, 577 (n. 12, 5 L. ed. 2d 302, 306 (1961), this Court specifically recognized that:

> "The Board has adopted the position that jurisdictional strikes in support of contract rights do not constitute violations of Section 8(b)(4)(D)."

This Court then continued, stating:

> ". . . The Board has explained this position as resting upon the principle that 'to fail to hold as controlling [herein] the contractual preemption of the work in dispute would be to encourage disregard for

observance of binding obligations under collective-bargaining agreements and invite the very jurisdictional disputes Section 8(b)(4)(D) is intended to prevent.'"[2]

The Court below agrees that this Court recognized that "jurisdictional strikes in support of contract rights did not constitute violations of Section 8(b)(4)(D)." However, the Court below continued, this Court also pointed out that in jurisdictional disputes the employer is usually the object of conflicting claims by separate unions having contracts with the employer, and that such conflict must first be resolved under Section 10(k). The Court below then draws in the Local 14 contract with Northern. *But this position, adopting that of the Board, improperly ignores the fact that, in this case, ILA has never claimed any of the work belonging to Local 14—that is, work "beyond the hook."* The Court below applies the Local 14 contract to work with which it is not involved, and refuses to give effect to the collective bargaining agreement between Northern and ILA, which was specifically made to cover the work at issue. Indeed, it accepts the position of the Board, which undertook to place two contracts beside each other and, then, purport to apply one (Local 14's) and effectively to dishonor the other (Local 1291's). This treatment is all the more shocking because the work at issue, both in nature and place of performance, is all that of Local 1291, the petitioner herein.

If the Board is to be permitted to take this arbitrary attitude, then no collective bargaining agreement is safe from invasion, since every trade works beside a neighbor. The Board's position would have the terms of a bargaining agreement depend *not* upon the meeting of the minds

2. This is quoted by the Supreme Court from *National Association of Broadcast Engineers*, 105 NLRB 355, 32 LRRM 1268, 1270 (1953). Similarly, *Tacoma Printing Pressman's Union, No. 44, and Valley Publishing Company*, 131 NLRB 1090, 48 LRRM 1187 (1961); *Local 48, Sheet Metal Workers and Gadsden Heating and Sheet Metal Co.*, 119 NLRB 287, 41 LRRM 1047 (1957).

but upon the presence or absence of an adjacent labor union and the unilateral desires of the employer. Thus, an employer could change the size of work gangs at any time by threatening to assign some of the gangs to work within another union's jurisdiction. In short, the Board has here undertaken to re-write the PMTA-ILA agreement, a proper and legal document, to accommodate it to what the *Board* thinks would be a better arrangement. This, it cannot do. It may *not* sit in judgment upon the substantive terms of a proper collective bargaining agreement and remold it as it desires, and thus render the entire process of collective bargaining into a mere illusion.

In this regard, in *NLRB v. American National Insurance Co.*, 343 U.S. 395, 408, 96 L. ed. 1027, 1039 (1952), this Court has emphasized that:

> ". . . The Board was not empowered so to disrupt collective bargaining practices. On the contrary, the term 'bargain collectively' as used in the Act 'has been considered to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States.' Order of R. Telegraphers v. Railway Express Agency, 321 U.S. 342, 346, 88 L. ed. 788, 791, 64 S. Ct. 582 (1944).
>
> "Congress provided expressly that the Board should not pass upon the desirability of the substantive terms of labor agreements. Whether a contract should contain a clause fixing standards for such matters as work scheduling or should provide for more flexible treatment of such matters is an issue for determination across the bargaining table, not by the Board. If the latter approach is agreed upon, the extent of union and management participation in the administration of such matters is itself a condition of employment to be settled by bargaining."

This Court stated, in that case, that

> "The Act does not compel any agreement whatsoever between employees and employers. *Nor does the*

> *Act regulate the substantive terms governing wages, hours and working conditions which are incorporated in an agreement"* (U.S. at 402, L. ed. at 1036).

This Court cited its prior holding in *Terminal R. Assoc. v. Brotherhood of R. Trainmen,* 318 U.S. 1, 6, 87 L. ed. 571, 577 (1943) that:

> "The Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulation of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working conditions as such. So far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for. The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions . . ."

More recently, in *NLRB v. Insurance Agents International,* 361 U.S. 477, 488, 490, 4 L. ed. 2d 454, 463, 465 (1960), this Court re-emphasized that:

> ". . . Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences. . . ."
>
> • • •
>
> ". . . Our labor policy is not presently erected on a foundation of government control of the results of negotiations. . . ."

One of the most important features which has been carefully negotiated throughout the long history of PMTA-ILA bargaining has been the sizes of the gangs required to handle the various types of cargo. In determining gang sizes, consideration has been given to the nature of the cargo, physical conditions and equipment involved, and

the minimum number of men required to perform each type of operation. As result of hard-fought negotiations, an agreement emerged between ILA and PMTA, fixing the number of men in each gang, depending upon the type of cargo.

Thus, Section 16 of the Agreement in effect in this case provides that 22 men are required in each gang where steel is handled across the pier in the same manner as general cargo. Section 17 provides that six men and a foreman constitute a gang for hatch and beam work on coal ships. Section 18 requires six men for each spout where a grain trimming machine is used. Section 14 provides that general cargo, the type at issue in this case, requires a 22-man gang. The relevant part of Section 14 provides:

> "Minimum number of men in gang when discharging or loading general cargo to or from the pier shall be twenty-two (22) men, including drivers of mechanical equipment, not less than eight (8) hold men discharging and eight (8) hold men loading. This clause is not to apply to handling . . . heavy lifts, . . ."

The agreement spells out in crystal-clear fashion the obligation on the part of Northern to engage 22 men in a gang for the handling of *general cargo*. Obviously, PMTA and ILA gave considerable thought to the specific problems inherent in handling specific cargo, and advisedly made determinations of the manpower necessary for each, just as this Court has provided. The invasion by the NLRB of this aspect of labor relations is an effort to invoke "government control of the results of negotiations", in specific conflict with the principle so clearly stated by this Court in *NLRB v. Insurance Agents International, supra*.

Nor can the Board properly determine that Local 14 was in any way involved in the implementation of the PMTA-ILA collective bargaining agreement. The general cargo provision was not newly inserted into the contract for the purpose of affecting Northern's relationship with Local 14, IUMSWA. Indeed, this provision has been in

the collective bargaining agreement between the employer association and the ILA long before Northern became a party to it upon its affiliation with PMTA. The basic issue essential to a resolution of this dispute turns on the nature of the commodity; i.e., were passenger automobiles "general cargo", or something else under the contract. This question is properly addressed to the grievance and arbitration machinery under Section 28 of the contract, as, indeed, the employer recognized in this case. Only because Northern was dissatisfied with the result did it ignore the decision of the arbitrators, after Northern had itself invoked that machinery. The testimony in the arbitration proceeding demonstrated very clearly that the handling of passenger automobiles fell under the heading of "general cargo" and required a 22-man gang, and the arbitration so held.

The NLRB has ignored the long-standing PMTA-ILA contract in supporting the employer's contention. In effect, it has determined what *it* felt the needs of the employer to be, and then proceeded to *re-write* the contract so that the gang size would conform with the Board's notion of the employer's requirements. The invasion by the Board into this territory is in complete conflict with the decisions of this Court. It is a flagrant excess of power, a danger signal to the entire mechanism of collective bargaining, and must not be permitted to stand.

II. The Board's Refusal to Give Effect to the Arbitrators' Decision Was Directly Contrary to the Policy Announced by This Court in United Steelworkers v. Warrior and Gulf Navigation Company, 363 U.S. 574.

When the NLRB changed the collective bargaining agreement regarding the size of the gang, it not only discarded the terms negotiated between the parties, but also dismissed out of hand the arbitration decision concerning these terms. This action and its confirmation by the Court below, were in direct conflict with the basic policy of the

National Labor Relations Act and the principles announced by this Court.

The "arbitral technique" is strongly favored by the Act and heartily encouraged by this Court. In *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 4 L. ed. 2d 1409 (1961), this Court made it quite clear that "arbitration of labor disputes is part and parcel of the collective bargaining process itself" (U.S. at 578, L. ed. at 1415); that "the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government" (U.S. at 581, L. ed. at 1416).

In the companion case, *United Steelworkers v. Enterprise Corp.*, 363 U.S. 593, 4 L. ed. 2d, 1424 (1960), this Court pursued the principle by stating that the provision in a contract for arbitration of grievances would be rendered meaningless if the merits of the decision were subject to review (U.S. at 599, L. ed. at 1429); that:

> ". . . the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." (U.S. at 599, L. ed. at 1429)

In the instant case, Northern, itself, initiated the grievance arbitration procedure, in accordance with the PMTA-ILA agreement. Upon an unfavorable ruling, it came to the Board for another bite at the apple. It is not within the power of the NLRB or the Court to cast aside the arbitration award, any more than they can re-write the collective bargaining agreement.

The Court below talks about "the relationship between Northern and Local 14", and that this makes significant the absence of Local 14 from the grievance hearing. The Court states that there were "corelative obligations between Local 14 and Local 1291", flowing from an alleged oral arrange-

ment[3] among the three. But, this arrangement, even if it did exist, had only one tripartite effect—it divided jurisdiction at the "hook". So long as Local 1291 made no demands past the hook, Local 14 was not a legally interested party.

It is undenied that Local 1291 makes no such claims. For, this does *not* affect the size of the longshoreman gang. It is clear and undisputed in the record that in all cases where the longshoremen operate, whether to the hook or beyond the hook, the size of the gang never varies (28b). Mr. Corry, Executive Secretary of PMTA, readily admitted that the existence of 22 men in the gang would not extend ILA's work past "the hook" at shipside (21b), as the NLRB infers. This was confirmed by Captain Hickman, another PMTA representative (28b). Thus, the Board had no basis whatever to conclude that, automatically, the demand for a 22-man gang must mean a demand for any work beyond "the hook", or any work that is in Local 14's jurisdiction. In the absence of any such real interest, the arbitration was not of Local 14's legitimate concern, and the arbitration award requiring 22 men binds both Local 1291 and Northern, the parties thereto.

The actions of the NLRB and the Court below have exceeded their power, in square conflict with the Act and the instructions of this Court. They must, in the interest of industrial peace and stability, be reviewed and set aside.

---

3. Prior to Northern's admission into PMTA, Northern contended that it had submitted a written agreement calling for a 15-man gang to an international representative of ILA who had refused to sign it. It was never submitted to autonomous Local 1291, ILA. In any event, after Northern's admission into PMTA, it became bound by the *written* agreement which superseded all prior agreements whatever their nature. Nor did Northern suggest, in all the years following its admission into PMTA, that it enjoyed any agreement different from that which bound every other member of PMTA.

CONCLUSION.

The opinion and decree below conflict materially with the decisions of this Court upon two important questions which have significant effect upon the operation of the National Labor Relations Act. Therefore, it is respectfully requested that a Writ of Certiorari be granted so that these matters may be reviewed by this Court.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
MARTIN J. VIGDERMAN,
FREEDMAN, BOROWSKY AND LORRY,
Counsel for Petitioner.

APPENDIX A.

National Labor Relations Act.

* * *

Sec. 8. Unfair Labor Practices.

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

* * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

* * *

Sec. 10. Prevention of Unfair Labor Practices.

* * *

(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charges shall be dismissed.

* * *

APPENDIX B.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 14879

NATIONAL LABOR RELATIONS BOARD.
Petitioner

v.

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Respondent

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Argued November 19, 1964

Before STALEY, GANEY and FREEDMAN, *Circuit Judges*

OPINION OF THE COURT.

(Filed April 19, 1965)

By FREEDMAN, *Circuit Judge.*

The Board seeks enforcement under § 10(e) of the National Labor Relations Act (29 U.S.C. § 160(e)) of its cease and desist order, entered in a jurisdictional dispute. The order would require Local 1291, International Longshoremen's Association, AFL-CIO, to refrain from seeking to force Northern Metal Company, the employer, to assign certain work related to the loading and unloading of vessels

to its own members rather than to members of Local 14, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO.[1]

The controversy arises out of rather unusual circumstances. Northern operates a dockside terminal in the Port of Philadelphia for the loading and unloading of ocean-going vessels. Adjoining the piers is a large yard and warehouse. From 1946 until 1951 Northern was primarily engaged in dismantling ships and selling the salvaged scrap. During that time all of the work at Northern's terminal, including the loading and unloading of vessels, was performed by members of Local 14, which was the certified bargaining representative of Northern's maintenance and production employees. In 1951 Northern substantially changed the nature of its business. It discontinued the dismantling and scrapping of ships and began to do stevedoring work. Most of this was by contract with the Army and consisted of loading and unloading military vehicles for shipment overseas; a small amount of its work was the handling of general cargo for private shippers. Before commencing this work for the Army Northern met with representatives of Local 14 and Local 1291 concerning possible jurisdictional problems in carrying out the contract. An oral agreement was reached for the division of work between the two unions. Local 14 was to move the vehicles within Northern's terminal to and from the point on the pier where the "hook" on the winch or crane falls to pick up or unload cargo. Local 1291 was given all the remaining work in the loading and unloading of vessels. It was specifically agreed that the longshoremen of Local 1291 would perform their duties in 15-man gangs. A written memorandum of agreement was prepared by Northern, but remained unsigned. After this arrangement was made in 1951 Northern joined the Philadelphia Marine Trade Association (PMTA), the collective bargaining agent for Philadelphia port employers engaged in waterfront activi-

1. The Board's Decision and Order is reported in 142 N.L.R.B. 1228.

ties. Northern thus became subject to the successive collective bargaining agreements made by PMTA with Local 1291 and other locals of ILA. The agreement of PMTA and Local 1291 provided for a minimum gang size of 22 men in loading and discharging "general cargo" and 15-man gangs for cargos of "heavy lift", which require less men because of the use of special hoisting equipment.

Thereafter—from 1951 to 1960—Northern continued the use of 15-man gangs composed of members of Local 1291, in conformity with the 1951 arrangement, even though more than 80% of the Army vehicles it handled were not within the classification of "heavy lift". Northern used the 22-man gangs provided for in the PMTA contract in all its other stevedoring operations when loading general cargo or mixtures of general cargo and vehicles.

In 1960 Northern was awarded a new Army contract for the loading of 30,000 to 60,000 privately owned automobiles of servicemen, referred to as POV's. The POV's were similar in size, weight and method of handling to a great portion of the vehicles which Northern had handled under the previous Army contract with 15-man gangs. Shortly before the first ship was due in port Northern notified Local 1291 that it would use 15-man gangs for this cargo. The Union replied that it would be considered "general cargo" and that unless 22-man gangs were used Northern would have trouble. Northern prevailed on the loading of the first ship, but the Union persisted in its objection and a temporary arrangement was made for the use of 19-man gangs in the loading of the second ship. On the arrival of the third ship a short time later the dispute reached the point where some longshoremen failed to arrive for work. The Union insisted that they would not come to work unless the gangs numbered 22 men for the POV work. After first rejecting this demand, Northern yielded in order to have the work done, but immediately filed a grievance under the PMTA-ILA contract. A hearing was held the following day before a panel consisting of repre-

sentatives of PMTA and of Local 1291. Local 14 was not notified of the hearing and was not represented. The panel orally decided that under the practice in the Port the handling of automobiles was regarded as general cargo and required 22-man gangs. It recognized the existence of a jurisdictional problem peculiar to Northern because it was the only Port employer which dealt with two separate unions, but stated that it had no power to resolve this problem.[2]

After losing the grievance decision Northern filed an unfair labor practice charge with the Board's regional director, alleging that Local 1291 had violated § 8(b)(4)(D) of the National Labor Relations Act (29 U.S.C. § 158(b)(4)(D)) by engaging in a strike and by inducing and encouraging individuals to refuse to perform services for the Company, with the object of forcing or requiring the assignment of the disputed work to the longshoremen it represented rather than to the yardmen represented by Local 14.[3] The Board, having determined after investigation

2. The Decision was put in the form of a letter a day later. The letter reads, in part, as follows:

"June 22, 1960

* * *

"P.M.T.A. recognizes that there is a problem peculiar to Northern Metal Company as opposed to any other place in the Port of Philadelphia area because the jurisdiction of two different unions are involved. However, P.M.T.A. representatives agree with union representatives on the Grievance Committee that the practice in the port in the handling of automobiles is that a gang of twenty-two men and a foreman are to be employed. If this decision results in jurisdictional problems between I.L.A. and the men from the other union who had jurisdiction over a certain portion of the work, P.M.T.A. is not empowered to resolve any such jurisdictional dispute and the dispute will have to be handled by the employer's attorney in the same manner as any other jurisdictional problems would be handled."

3. Section 8 of the Act provides:

* * *

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted

that there was reasonable cause to believe the charge made, held the hearing prescribed by § 10(k) of the Act (29 U.S.C. § 160(k)). It determined that the yardmen of Local 14 were entitled to perform the work of moving vehicles to and from the shore side of the "hook" and that Local 1291 was not entitled to compel the Company to hire 22-man gangs rather than 15-man gangs when this would force it to assign the moving of vehicles to longshoremen rather than yardmen. The Board therefore directed Local 1291 to comply with this determination[4] and on its refusal to do so, general counsel issued a complaint against it. The parties, by agreement, rested on the record in the § 10(k) proceeding. Meanwhile, the Board, acting under § 10(l) of the Act (29 U.S.C. § 160(l)), secured in the District Court a temporary injunction pending its final disposition of the charge. The Court enjoined Local 1291 from encouraging conduct which had as an object the coercion of Northern "to assign the work of moving motor vehicles to be loaded upon or unloaded from ships, to and from the point where such vehicles are taken over by, or released from 'the hook', to employees who are members of . . . Local 1291, . . . rather than to employees who are members of . . . Local 14 . . ." *Schauffler v. Local 1291, ILA*, 188 F.Supp. 203 (E.D.Pa. 1960).[5] This Court affirmed, 292 F.2d 182 (3 Cir. 1961). We held that the find-

refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: . . . (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: . . ."

4. See 137 N.L.R.B. 1451.

5. A finding of civil contempt against Local 1291 (Schauffler v. Local 1291, ILA, 189 F.Supp. 737 (E.D.Pa. 1960)) was reversed: Id., 292 F.2d 182 (3 Cir. 1961).

ing of the District Court that there was reasonable cause to believe that Local 1291 demanded that Northern assign work to its members rather than to employees represented by Local 14 was supported by substantial evidence. We also rejected the claim that the District Court should have declared at that stage of the case that the PMTA-ILA contract and the grievance panel's decision constituted a legal defense to the charge. Chief Judge Biggs, speaking for the Court, said: "It is apparent that many questions of fact and of law would have had to have been resolved by the court below before it could have determined the precise effect of the PMTA-ILA contract and the June 21, 1960 grievance proceeding on the present controversy. At least some of these questions must be recognized to be other than frivolous in nature. If, in a Section 10(l) proceeding, a district court or a court of appeals undertook to finally adjudicate such questions it would not be acting consistently with the congressional policy underlying Section 10(l). That Section's usefulness as a tool with which the status quo may be preserved pending final adjudication would be diminished insofar as the Board would be required to finally litigate questions of substance at a preliminary stage. Moreover, the court would not have the benefit of the Board's opinion on questions of fact and novel questions of labor law when making its decision. Thus, the court would, to some extent, usurp the Board's function as the primary fact finder in cases arising under the Act and its function as primary interpreter of the statutory scheme. . . ." (292 F.2d at p. 188).

The Board has now decided these questions and the problem before us is whether its findings are based upon substantial evidence and if so, whether the charge of unfair labor practice within the meaning of §.8(b)(4)(D) of the Act has been made out.

The Board was fully warranted in refusing to accept the claim of Local 1291 that the work stoppage was the spontaneous and isolated action of some of its members but was

not the act of Local 1291. Indeed, any other finding would have been contrary to the great weight of the evidence. The real question in the case is whether an "object" of Local 1291's inducement and encouragement of the strike or refusal to work was to force or require Northern, as an employer, "to assign particular work" to members of Local 1291 "rather than to" members of Local 14.

Northern filed a so-called "featherbedding" charge under § 8(b)(6) of the Act [6] after the decision of the grievance panel, which it later withdrew. Although "featherbedding" as such is not before us, the withdrawal of that charge does not limit the scope of the factual inquiry in the present proceeding as to the object of Local 1291 in seeking to compel Northern to increase the size of the gangs handling POV's from 15 to 22 men.

The contention of Local 1291 has an attractive simplicity. Shortly stated it is that it has not sought or coveted any of the work that belongs to employees in Local 14, but seeks only Northern's compliance with its contract with Local 1291. Such compliance, it argues, requires gangs of 22 men because POV shipments constitute general cargo, a matter on which the employer invoked the arbitration machinery provided in the contract and which the grievance panel decided against the employer. Local 1291 insists that it has not sought to break the arrangement by which its members are limited to work on the ship side of the "hook", and that the use of 22-man gangs in harmony with the practice prevailing throughout the Port is a matter of concern between Local 1291 and Northern, which is not in the slightest degree intended to affect Northern's relationship with Local 14.

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6. Section 8(b)(6) of the Act provides: "It shall be an unfair labor practice for a labor organization or its agents—

* * *

"(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed." (29 U.S.C. §158(b)(6)).

This contention requires consideration of two elements: (1) was it an object of the effort of Local 1291 to force or require Northern to assign work to its members rather than to employees who were members of Local 14; and (2) if such was the object, how is it affected because the effort was to obtain compliance with Local 1291's contract with Northern.

(1) The evidence contained in the printed appendix and in the typewritten proceedings before the hearing examiner of the Board justify the Board's conclusion that an object of the demand made by Local 1291 was to force or require Northern to give particular work to its members rather than to members of Local 14. It is not necessary to narrate this evidence in detail.

The triangular oral agreement among Northern, Local 14 and Local 1291 originated in a meeting called by Northern to make certain that there would be no jurisdictional dispute. The purpose of the negotiations therefore was to settle the jurisdictional claims that the two Locals might have before Northern entered into its contract with the Army and before it joined PMTA. The arrangement made resolved the fundamental elements of a jurisdictional problem. For it fixed the "hook" as the jurisdictional boundary line for the Locals and by limiting the gang size to 15 men it made this boundary line realistic by leaving enough work to be done on the shore side of the "hook" to justify the economic use of the men of Local 14. Thus the geographical and numerical terms of the oral agreement made the settlement of the jurisdictional problems practical for both Locals and for the employer. The fact that the agreement, although reduced to writing, was not signed loses its significance in the circumstances revealed by the record. It was in fact carried out over a period of nine years and thus received a recognition of greater significance than its mere signing would have had. Moreover, it is readily understandable why Local 1291 would not sign the agreement. Contracts of this nature require the signature of the In-

ternational Vice President in charge of this area. It was one thing to enter into an oral arrangement which established a *modus vivendi* between these two Locals, one of ILA and the other of IUMSWA. It would have been quite another matter for the International Vice President of ILA to have formalized such a jurisdictional settlement, for he also represented a number of other locals in ILA who were in competition with Local 14 of IUMSWA. It is evident that the representatives of ILA were satisfied to establish what was in effect a truce but were reluctant to formalize it in a peace treaty.

A reading of the evidence given by the International Vice President of ILA makes it clear that notwithstanding the arrangement made, ILA continued in the nine years which followed to entertain the desire to take over, both for Local 1291 and for other locals of ILA, the work that was being done by Local 14 of IUMSWA. The evidence shows how this intention cropped out on occasion in overt action. It expressed itself later when Northern complained of the difficulty it would have with Local 14 if it yielded to Local 1291's demand for the use of 22-man gangs on the POV shipments. The evidence justifies the construction which the Board placed on it that at that time Local 1291 in effect offered to solve Northern's problem by taking over the work of Local 14. On a number of occasions after Northern acceded under protest to the use of 22-man gangs, Local 1291 men were observed doing work normally done by Local 14 men. The evidence on this is fragmentary but its implications are significant. There is evidence that jurisdictional disputes existed concerning the handling of motor vehicles, and that there were efforts to establish a new "jurisdictional line" even to the extent of establishing the right of Local 1291 to handle import cargo to the final point of rest.

Finally, the PMTA-ILA contract on which Local 1291 founds the justification for its demands is based on the Port practice under which six or seven men of the 22-man gangs

perform work which under the jurisdictional settlement agreement was given to Local 14. Thus, to argue for the Port practice or for compliance with the PMTA-ILA contract or the decision of the grievance panel, is by the very Port usage on which both contract and grievance decision were based, to argue for the doing of the work of six or seven Local 14 men by each 22-man gang of Local 1291 members.

It therefore will not do for Local 1291 to assert that it was indifferent to the effect of its seeking to secure 22-man gangs on the members of Local 14. The Board was justified in finding that if a 22-man gang was used there would be approximately seven men in that gang whose work would not be needed if the traditional work of the members of Local 14 was to be done. This amounts to a willingness by Local 1291 to permit approximately seven men to be duplicated in Local 14 and Local 1291, a duplication of job assignments which is not an acceptable means of avoiding a jurisdictional dispute. *International Typographical Union,* 121 N.L.R.B. 793, 799 (1958); cf. *International Brotherhood of Carpenters & Joiners of America v. C. J. Montag & Sons, Inc.,* 335 F.2d 216 (9 Cir. 1964), cert. denied — U.S. — (1965).

It is clear that an object of the conduct of Local 1291 was to require Northern to assign particular work to its members rather than to members of Local 14.

(2) There remains the question whether in the circumstances there was legal justification for what otherwise would constitute a violation by Local 1291 of § 8(b)(4)(D). Mr. Justice Black pointed out in *N.L.R.B. v. Radio Engineers,* 364 U.S. 573, 577 n. 12 (1961), that the Board had adopted the view that jurisdictional strikes in support of contract rights did not constitute violations of § 8(b)(4)(D) even though it contains no provision for special treatment of such strikes. In doing this the Board sought to encourage the sanctity of the obligation of collective bargain-

ing agreements. Mr. Justice Black pointed out, however, that in jurisdictional disputes the employer usually is the object of conflicting claims by separate unions which have contracts with the employer. It was therefore held in *Radio Engineers* that whenever a jurisdictional dispute arises it is the duty of the Board under § 10(k) to determine as swiftly as possible to which of the claimant unions the work belongs and thus relieve the employer of the controversy to which he is innocently subjected because he had contracted with both of them. This determination must be made in the light of the knowledge of the industry and of the surrounding circumstances which would guide arbitrators, employers or joint boards in arriving at similar decisions. (See p. 583). The contract which is one of the elements in the causation of the dispute is, of course, an element to be considered. But it cannot be conclusive, for as already pointed out there usually is more than one contract and it is the competing claims of right under separate contracts which form the origin of the jurisdictional dispute.[7] The Board in its decisions has given consideration to the priority of competing contracts[8] and conduct from which may be inferred a waiver of a subsequent claim of a contrary meaning of a contract.[9]

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7. "[T]o determine or settle the dispute as between . . . [two or more groups of employees] would normally require a decision that one or the other is entitled to do the work in dispute. Any decision short of that would obviously not be conducive to quieting a quarrel between two groups which, here as in most instances, is of so little interest to the employer that he seems perfectly willing to assign work to either if the other will just let him alone. [The] . . . language [of § 10(k)] also indicates a congressional purpose to have the Board do something more than merely look at prior Board orders and certifications or a *collective bargaining contract* to determine whether one or the other union has a clearly defined statutory or contractual right to have the employees it represents perform certain work tasks." (p. 579) (Italics supplied) Cf. International Brotherhood of Carpenters & Joiners v. C. J. Montag & Sons, Inc., 335 F.2d 216, 220 (9 Cir. 1964), cert. denied — U.S. — (1965).

8. Tacoma Printing Pressmen's Union, No. 44,131 N.L.R.B. 1090 (1961); National Broadcasting Co., 105 N.L.R.B. 355 (1953).

9. National Assn. of Broadcast Engineers & Technicians, 110 N.L.R.B. 1233 (1954).

It is in this light that the PMTA-ILA contract must be viewed. Even if its definition of general cargo would justify a conclusion that POV shipments required 22-man gangs and even if full recognition is accorded to the grievance panel's decision albeit it is clouded by an express reference to the jurisdictional problem, nevertheless in the complete setting of a jurisdictional dispute this one sector of the controversy is not decisive. For what is here involved includes another sector in the problem, the relationship between Northern and Local 14. It is in this light that the absence of Local 14 from the grievance hearing takes on a significance beyond that which normally exists from the lack of notice and an opportunity to be heard. For the parties by their conduct at that time recognized that they were dealing with the rights of Northern and Local 1291 *inter sese* and were not presuming to deal with the rights of Northern and Local 14 or with the corelative obligations between Local 14 and Local 1291 which flowed from their arrangements with Northern. The only solid foundation of consent between Local 14 and Local 1291 was neither their separate contracts with Northern nor the grievance proceedings between Local 1291 and Northern, but rather the triangular arrangement among Northern, Local 1291 and Local 14. In this, the only arrangement among the three, the Board found on ample evidence that the parties arranged for the division of work and for the boundary lines which would mark their activities and avoid a jurisdictional dispute. This agreement fixed their respective rights geographically and in gang size. It satisfied the employer and satisfied the two unions. The parties operated under it for almost ten years. The "hook" became the geographical boundary of the jurisdiction of each union and the limitation of gang size to 15 men was the means by which this was to be carried out, indeed the only means unless there was to be duplication of work.

The subsequent act of Northern in joining PMTA and thereby binding itself to the PMTA-ILA contracts did

not alter the jurisdictional relationship. The best proof of this is the fact that the nine or ten year period that followed this action was one in which the triangular arrangement continued.

We do not, of course, decide these factual questions. What we decide is that there is substantial evidence to justify the Board's findings that these are the facts. We agree that on these findings the Board was justified in concluding that Local 1291 should be ordered to cease and desist from continuing to seek 22-man gangs and thereby deprive Local 14 of work for seven of its members.

The order of the Board will be enforced.

APPENDIX C.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 14879.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Respondent.

DECREE.

Before: Staley, Ganey and Freedman, *Circuit Judges.*

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for enforcement of a certain order issued by it against Respondent on June 18, 1963. The Court heard argument of respective counsel on November 19, 1964, and has considered the briefs and transcript of record filed in this cause. On April 19, 1965, the Court, being fully advised in the premises, handed down its decision granting enforcement of the Board's order.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Third Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and that

Local 1291, International Longshoremen's Association, AFL-CIO, its officers, representatives, agents, successors and assigns, abide by and perform the directions of the Board in said order contained.

By THE COURT,

ABRAHAM L. FREEDMAN,
Circuit Judge.

Dated May 10, 1965